

FIRST REGULAR SESSION

SENATE BILL NO. 174

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREEN.

Pre-filed December 18, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0602S.011

AN ACT

To repeal sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 610.010, 630.005, 630.165, 630.167, 630.410, 630.705, 630.715, 630.755, and 633.005, RSMo, and to enact in lieu thereof twenty new sections relating to private mental health facilities and group homes, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 610.010, 630.005, 630.165, 630.167, 630.410, 630.705, 630.715, 630.755, and 633.005, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 610.010, 630.005, 630.165, 630.167, 630.410, 630.705, 630.715, 630.755, 633.005, 633.300, 633.303, 633.306, and 633.309, to read as follows:

210.900. 1. Sections 210.900 to 210.936 shall be known and may be cited as the "Family Care Safety Act".

2. As used in sections 210.900 to 210.936, the following terms shall mean:

(1) "Child-care provider", any licensed or license-exempt child-care home, any licensed or license-exempt child-care center, child-placing agency, residential care facility for children, group home, foster family group home, foster family home, employment agency that refers a child-care worker to parents or guardians as defined in section 289.005, RSMo. The term "child-care provider" does not include summer camps or voluntary associations designed primarily for recreational or educational purposes;

(2) "Child-care worker", any person who is employed by a child-care provider, or receives state or federal funds, either by direct payment, reimbursement or voucher payment, as remuneration for child-care services;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

- 14 (3) "Department", the department of health and senior services;
- 15 (4) "Elder-care provider", any operator licensed pursuant to chapter 198,
 16 RSMo, or any person, corporation, or association who provides in-home services
 17 under contract with the division of aging, or any employer of nurses or nursing
 18 assistants of home health agencies licensed pursuant to sections 197.400 to
 19 197.477, RSMo, or any nursing assistants employed by a hospice pursuant to
 20 sections 197.250 to 197.280, RSMo, or that portion of a hospital for which
 21 subdivision (3) of subsection 1 of section 198.012, RSMo, applies;
- 22 (5) "Elder-care worker", any person who is employed by an elder-care
 23 provider, or who receives state or federal funds, either by direct payment,
 24 reimbursement or voucher payment, as remuneration for elder-care services;
- 25 (6) ["Patrol", the Missouri state highway patrol;
- 26 (7)] "Employer", any child-care provider, elder-care provider, or
 27 personal-care provider as defined in this section;
- 28 (7) **"Mental health provider", any private mental health facility**
 29 **or group home, as defined in section 633.005, RSMo;**
- 30 (8) **"Mental health worker", any person employed by a mental**
 31 **health provider or group home;**
- 32 (9) **"Patrol", the Missouri state highway patrol;**
- 33 [(8)] (10) "Personal-care attendant" or "personal-care worker", a person
 34 who performs routine services or supports necessary for a person with a physical
 35 or mental disability to enter and maintain employment or to live independently;
- 36 [(9)] (11) "Personal-care provider", any person, corporation, or association
 37 who provides personal-care services or supports under contract with the
 38 department of mental health, the division of aging, the department of health and
 39 senior services or the department of elementary and secondary education;
- 40 [(10)] (12) "Related child care", child care provided only to a child or
 41 children by such child's or children's grandparents, great-grandparents, aunts or
 42 uncles, or siblings living in a residence separate from the child or children;
- 43 [(11)] (13) "Related elder care", care provided only to an elder by an
 44 adult child, a spouse, a grandchild, a great-grandchild or a sibling of such elder.
- 210.903. 1. To protect children, the elderly, [and] **the disabled, and**
 2 **mentally retarded and developmentally disabled** individuals in this state,
 3 and to promote family and community safety by providing information concerning
 4 family caregivers, there is hereby established within the department of health
 5 and senior services a "Family Care Safety Registry and Access Line" which shall

6 be available by January 1, 2001.

7 2. The family care safety registry shall contain information on child-care
8 workers', elder-care workers', **mental health workers'**, and personal-care
9 workers' background and on child-care, elder-care, **mental health**, and
10 personal-care providers through:

11 (1) The patrol's criminal record check system pursuant to section 43.540,
12 RSMo, including state and national information, to the extent possible;

13 (2) Probable cause findings of abuse and neglect prior to August 28, 2004,
14 or findings of abuse and neglect by a preponderance of the evidence after August
15 28, 2004, pursuant to sections 210.109 to 210.183 and, as of January 1, 2003,
16 financial exploitation of the elderly or disabled, pursuant to section 570.145,
17 RSMo;

18 (3) The division of aging's employee disqualification list pursuant to
19 section 660.315, RSMo;

20 (4) As of January 1, 2003, the department of mental health's employee
21 disqualification registry;

22 (5) Foster parent licensure denials, revocations and involuntary
23 suspensions pursuant to section 210.496;

24 (6) Child-care facility license denials, revocations and suspensions
25 pursuant to sections 210.201 to 210.259;

26 (7) Residential living facility and nursing home license denials,
27 revocations, suspensions and probationary status pursuant to chapter 198, RSMo;
28 and

29 (8) As of January 1, 2004, a check of the patrol's Missouri uniform law
30 enforcement system (MULES) for sexual offender registrations pursuant to
31 section 589.400, RSMo.

210.906. 1. Every child-care worker or elder-care worker hired on or after
2 January 1, 2001, or personal-care worker hired on or after January 1, 2002, **or**
3 **mental health worker hired on or after January 1, 2008**, shall complete
4 a registration form provided by the department. The department shall make such
5 forms available no later than January 1, 2001, and may, by rule, determine the
6 specific content of such form, but every form shall:

7 (1) Request the valid Social Security number of the applicant;

8 (2) Include information on the person's right to appeal the information
9 contained in the registry pursuant to section 210.912;

10 (3) Contain the signed consent of the applicant for the background checks

11 required pursuant to this section; and

12 (4) Contain the signed consent for the release of information contained in
13 the background check for employment purposes only.

14 2. Every child-care worker or elder-care worker hired on or after January
15 1, 2001, and every personal-care worker hired on or after January 1, 2002, **and**
16 **every mental health worker hired on or after January 1, 2008**, shall
17 complete a registration form within fifteen days of the beginning of such person's
18 employment. Any person employed as a child-care, elder-care, **mental health**,
19 or personal-care worker who fails to submit a completed registration form to the
20 department of health and senior services as required by sections 210.900 to
21 210.936 without good cause, as determined by the department, is guilty of a class
22 B misdemeanor.

23 3. The costs of the criminal background check may be paid by the
24 individual applicant, or by the provider if the applicant is so employed, or for
25 those applicants receiving public assistance, by the state through the terms of the
26 self-sufficiency pact pursuant to section 208.325, RSMo. Any moneys remitted to
27 the patrol for the costs of the criminal background check shall be deposited to the
28 credit of the criminal record system fund as required by section 43.530, RSMo.

29 4. Any person licensed pursuant to sections 210.481 to 210.565 shall be
30 automatically registered in the family care safety registry at no additional cost
31 other than the costs required pursuant to sections 210.481 to 210.565.

32 5. Any person not required to register pursuant to the provisions of
33 sections 210.900 to 210.936 may also be included in the registry if such person
34 voluntarily applies to the department for registration and meets the requirements
35 of this section and section 210.909, including submitting to the background checks
36 in subsection 1 of section 210.909.

37 6. The provisions of sections 210.900 to 210.936 shall not extend to related
38 child care, related elder care or related personal care.

210.909. 1. Upon submission of a completed registration form by a
2 child-care worker, elder-care worker, **mental health worker**, or personal-care
3 attendant, the department shall:

4 (1) Determine if a probable cause finding of child abuse or neglect prior
5 to August 28, 2004, or a finding of child abuse or neglect by a preponderance of
6 the evidence after August 28, 2004, involving the applicant has been recorded
7 pursuant to sections 210.109 to 210.183 and, as of January 1, 2003, if there is a
8 probable cause finding of financial exploitation of the elderly or disabled pursuant

9 to section 570.145, RSMo;

10 (2) Determine if the applicant has been refused licensure or has
11 experienced involuntary licensure suspension or revocation pursuant to section
12 210.496;

13 (3) Determine if the applicant has been placed on the employee
14 disqualification list pursuant to section 660.315, RSMo;

15 (4) As of January 1, 2003, determine if the applicant is listed on the
16 department of mental health's employee disqualification registry;

17 (5) Determine through a request to the patrol pursuant to section 43.540,
18 RSMo, whether the applicant has any criminal history record for a felony or
19 misdemeanor or any offense for which the person has registered pursuant to
20 sections 589.400 to 589.425, RSMo; and

21 (6) If the background check involves a provider, determine if a facility has
22 been refused licensure or has experienced licensure suspension, revocation or
23 probationary status pursuant to sections 210.201 to 210.259 or chapter 198,
24 RSMo; and

25 (7) As of January 1, 2004, determine through a request to the patrol if the
26 applicant is a registered sexual offender pursuant to section 589.400, RSMo,
27 listed in the Missouri uniform law enforcement system (MULES).

28 2. Upon completion of the background check described in subsection 1 of
29 this section, the department shall include information in the registry for each
30 registrant as to whether any convictions, employee disqualification listings,
31 registry listings, probable cause findings, pleas of guilty or nolo contendere, or
32 license denial, revocation or suspension have been documented through the
33 records checks authorized pursuant to the provisions of sections 210.900 to
34 210.936.

35 3. The department shall notify such registrant in writing of the results of
36 the determination recorded on the registry pursuant to this section.

210.915. The department of corrections, the department of public safety,
2 the department of social services and the department of mental health shall
3 collaborate with the department to compare records on child-care, elder-care,
4 **mental health**, and personal-care workers, and the records of persons with
5 criminal convictions and the background checks pursuant to subdivisions (1) to
6 (6) of subsection 2 of section 210.903, and to enter into any interagency
7 agreements necessary to facilitate the receipt of such information and the ongoing
8 updating of such information. The department shall promulgate rules and

9 regulations concerning such updating, including subsequent background reviews
10 as listed in subsection 1 of section 210.909.

210.921. 1. The department shall not provide any registry information
2 pursuant to this section unless the department obtains the name and address of
3 the person calling, and determines that the inquiry is for employment purposes
4 only. For purposes of sections 210.900 to 210.936, "employment purposes"
5 includes direct employer-employee relationships, prospective employer-employee
6 relationships, and screening and interviewing of persons or facilities by those
7 persons contemplating the placement of an individual in a child-care, elder-care,
8 **mental health**, or personal-care setting. Disclosure of background information
9 concerning a given applicant recorded by the department in the registry shall be
10 limited to:

11 (1) Confirming whether the individual is listed in the registry; and

12 (2) Indicating whether the individual has been listed or named in any of
13 the background checks listed in subsection 2 of section 210.903. If such
14 individual has been so listed, the department of health and senior services shall
15 only disclose the name of the background check in which the individual has been
16 identified. With the exception of any agency licensed by the state to provide child
17 care, elder care, **mental health services**, or personal care which shall receive
18 specific information immediately if requested, any specific information related to
19 such background check shall only be disclosed after the department has received
20 a signed request from the person calling, with the person's name, address and
21 reason for requesting the information.

22 2. Any person requesting registry information shall be informed that the
23 registry information provided pursuant to this section consists only of information
24 relative to the state of Missouri and does not include information from other
25 states or information that may be available from other states.

26 3. Any person who uses the information obtained from the registry for any
27 purpose other than that specifically provided for in sections 210.900 to 210.936
28 is guilty of a class B misdemeanor.

29 4. When any registry information is disclosed pursuant to subdivision (2)
30 of subsection 1 of this section, the department shall notify the registrant of the
31 name and address of the person making the inquiry.

32 5. The department of health and senior services staff providing
33 information pursuant to sections 210.900 to 210.936 shall have immunity from
34 any liability, civil or criminal, that otherwise might result by reason of such

35 actions; provided, however, any department of health and senior services staff
36 person who releases registry information in bad faith or with ill intent shall not
37 have immunity from any liability, civil or criminal. Any such person shall have
38 the same immunity with respect to participation in any judicial proceeding
39 resulting from the release of registry information. The department is prohibited
40 from selling the registry or any portion of the registry for any purpose including
41 "employment purposes" as defined in subsection 1 of this section.

210.927. The department of health and senior services shall make an
2 annual report, no later than July first of each year, to the speaker of the house
3 of representatives and the president pro tem of the senate on the operation of the
4 family care safety registry and toll-free telephone service, including data on the
5 number of information requests received from the public, identification of any
6 barriers encountered in administering the provisions of sections 210.900 to
7 210.936, recommendations for removing or minimizing the barriers so identified,
8 and any recommendations for improving the delivery of information on child-care,
9 elder-care, **mental health**, and personal-care workers to the public.

610.010. As used in this chapter, unless the context otherwise indicates,
2 the following terms mean:

3 (1) "Closed meeting", "closed record", or "closed vote", any meeting, record
4 or vote closed to the public;

5 (2) "Copying", if requested by a member of the public, copies provided as
6 detailed in section 610.026, if duplication equipment is available;

7 (3) "Public business", all matters which relate in any way to the
8 performance of the public governmental body's functions or the conduct of its
9 business;

10 (4) "Public governmental body", any legislative, administrative or
11 governmental entity created by the constitution or statutes of this state, by order
12 or ordinance of any political subdivision or district, judicial entities when
13 operating in an administrative capacity, or by executive order, including:

14 (a) Any body, agency, board, bureau, council, commission, committee,
15 board of regents or board of curators or any other governing body of any
16 institution of higher education, including a community college, which is supported
17 in whole or in part from state funds, including but not limited to the
18 administrative entity known as "The Curators of the University of Missouri" as
19 established by section 172.020, RSMo;

20 (b) Any advisory committee or commission appointed by the governor by

21 executive order;

22 (c) Any department or division of the state, of any political subdivision of
23 the state, of any county or of any municipal government, school district or special
24 purpose district including but not limited to sewer districts, water districts, and
25 other subdistricts of any political subdivision;

26 (d) Any other legislative or administrative governmental deliberative body
27 under the direction of three or more elected or appointed members having
28 rulemaking or quasi-judicial power;

29 (e) Any committee appointed by or at the direction of any of the entities
30 and which is authorized to report to any of the above-named entities, any
31 advisory committee appointed by or at the direction of any of the named entities
32 for the specific purpose of recommending, directly to the public governmental
33 body's governing board or its chief administrative officer, policy or policy revisions
34 or expenditures of public funds including, but not limited to, entities created to
35 advise bi-state taxing districts regarding the expenditure of public funds, or any
36 policy advisory body, policy advisory committee or policy advisory group
37 appointed by a president, chancellor or chief executive officer of any college or
38 university system or individual institution at the direction of the governing body
39 of such institution which is supported in whole or in part with state funds for the
40 specific purpose of recommending directly to the public governmental body's
41 governing board or the president, chancellor or chief executive officer policy,
42 policy revisions or expenditures of public funds provided, however, the staff of the
43 college or university president, chancellor or chief executive officer shall not
44 constitute such a policy advisory committee. The custodian of the records of any
45 public governmental body shall maintain a list of the policy advisory committees
46 described in this subdivision;

47 (f) Any quasi-public governmental body. The term "quasi-public
48 governmental body" means any person, corporation or partnership organized or
49 authorized to do business in this state pursuant to the provisions of chapter 352,
50 353, or 355, RSMo, or unincorporated association which either:

51 a. Has as its primary purpose to enter into contracts with public
52 governmental bodies, or to engage primarily in activities carried out pursuant to
53 an agreement or agreements with public governmental bodies; or

54 b. Performs a public function as evidenced by a statutorily based capacity
55 to confer or otherwise advance, through approval, recommendation or other
56 means, the allocation or issuance of tax credits, tax abatement, public debt,

57 tax-exempt debt, rights of eminent domain, or the contracting of leaseback
58 agreements on structures whose annualized payments commit public tax
59 revenues; or any association that directly accepts the appropriation of money from
60 a public governmental body, but only to the extent that a meeting, record, or vote
61 relates to such appropriation; [and]

62 (g) Any bi-state development agency established pursuant to section
63 70.370, RSMo; **and**

64 **(h) Any private mental health facility or group home as defined**
65 **in section 633.005, RSMo;**

66 (5) "Public meeting", any meeting of a public governmental body subject
67 to sections 610.010 to 610.030 at which any public business is discussed, decided,
68 or public policy formulated, whether such meeting is conducted in person or by
69 means of communication equipment, including, but not limited to, conference call,
70 video conference, Internet chat, or Internet message board. The term "public
71 meeting" shall not include an informal gathering of members of a public
72 governmental body for ministerial or social purposes when there is no intent to
73 avoid the purposes of this chapter, but the term shall include a public vote of all
74 or a majority of the members of a public governmental body, by electronic
75 communication or any other means, conducted in lieu of holding a public meeting
76 with the members of the public governmental body gathered at one location in
77 order to conduct public business;

78 (6) "Public record", any record, whether written or electronically stored,
79 retained by or of any public governmental body including any report, survey,
80 memorandum, or other document or study prepared for the public governmental
81 body by a consultant or other professional service paid for in whole or in part by
82 public funds, including records created or maintained by private contractors
83 under an agreement with a public governmental body or on behalf of a public
84 governmental body; provided, however, that personally identifiable student
85 records maintained by public educational institutions shall be open for inspection
86 by the parents, guardian or other custodian of students under the age of eighteen
87 years and by the parents, guardian or other custodian and the student if the
88 student is over the age of eighteen years. The term "public record" shall not
89 include any internal memorandum or letter received or prepared by or on behalf
90 of a member of a public governmental body consisting of advice, opinions and
91 recommendations in connection with the deliberative decision-making process of
92 said body, unless such records are retained by the public governmental body or

93 presented at a public meeting. Any document or study prepared for a public
94 governmental body by a consultant or other professional service as described in
95 this subdivision shall be retained by the public governmental body in the same
96 manner as any other public record;

97 (7) "Public vote", any vote, whether conducted in person, by telephone, or
98 by any other electronic means, cast at any public meeting of any public
99 governmental body.

630.005. As used in this chapter and chapters 631, 632, and 633, RSMo,
2 unless the context clearly requires otherwise, the following terms shall mean:

3 (1) "Administrative entity", a provider of specialized services other than
4 transportation to clients of the department on behalf of a division of the
5 department;

6 (2) "Alcohol abuse", the use of any alcoholic beverage, which use results
7 in intoxication or in a psychological or physiological dependency from continued
8 use, which dependency induces a mental, emotional or physical impairment and
9 which causes socially dysfunctional behavior;

10 (3) "Chemical restraint", medication administered with the primary intent
11 of restraining a patient who presents a likelihood of serious physical injury to
12 himself or others, and not prescribed to treat a person's medical condition;

13 (4) "Client", any person who is placed by the department in a facility or
14 program, **including private mental health facilities and group homes**,
15 licensed and funded by the department or who is a recipient of services from a
16 regional center, as defined in section 633.005, RSMo;

17 (5) "Commission", the state mental health commission;

18 (6) "Consumer", a person:

19 (a) Who qualifies to receive department services; or

20 (b) Who is a parent, child or sibling of a person who receives department
21 services; or

22 (c) Who has a personal interest in services provided by the department.
23 A person who provides services to persons affected by mental retardation,
24 developmental disabilities, mental disorders, mental illness, or alcohol or drug
25 abuse shall not be considered a consumer;

26 (7) "Day program", a **privately or publicly funded** place conducted or
27 maintained by any person who advertises or holds himself out as providing
28 prevention, evaluation, treatment, habilitation or rehabilitation for persons
29 affected by mental disorders, mental illness, mental retardation, developmental

30 disabilities or alcohol or drug abuse for less than the full twenty-four hours
31 comprising each daily period;

32 (8) "Department", the department of mental health of the state of
33 Missouri;

34 (9) "Developmental disability", a disability:

35 (a) Which is attributable to:

36 a. Mental retardation, cerebral palsy, epilepsy, head injury or autism, or
37 a learning disability related to a brain dysfunction; or

38 b. Any other mental or physical impairment or combination of mental or
39 physical impairments; and

40 (b) Is manifested before the person attains age twenty-two; and

41 (c) Is likely to continue indefinitely; and

42 (d) Results in substantial functional limitations in two or more of the
43 following areas of major life activities:

44 a. Self-care;

45 b. Receptive and expressive language development and use;

46 c. Learning;

47 d. Self-direction;

48 e. Capacity for independent living or economic self-sufficiency;

49 f. Mobility; and

50 (e) Reflects the person's need for a combination and sequence of special,
51 interdisciplinary, or generic care, habilitation or other services which may be of
52 lifelong or extended duration and are individually planned and coordinated;

53 (10) "Director", the director of the department of mental health, or his
54 designee;

55 (11) "Domiciled in Missouri", a permanent connection between an
56 individual and the state of Missouri, which is more than mere residence in the
57 state; it may be established by the individual being physically present in Missouri
58 with the intention to abandon his previous domicile and to remain in Missouri
59 permanently or indefinitely;

60 (12) "Drug abuse", the use of any drug without compelling medical reason,
61 which use results in a temporary mental, emotional or physical impairment and
62 causes socially dysfunctional behavior, or in psychological or physiological
63 dependency resulting from continued use, which dependency induces a mental,
64 emotional or physical impairment and causes socially dysfunctional behavior;

65 (13) "Habilitation", a process of treatment, training, care or specialized

66 attention which seeks to enhance and maximize the mentally retarded or
67 developmentally disabled person's abilities to cope with the environment and to
68 live as normally as possible;

69 (14) "Habilitation center", a residential facility operated by the
70 department **or a private mental health facility or group home, as defined**
71 **in section 633.005, RSMo**, and serving only persons who are mentally retarded,
72 including developmentally disabled;

73 (15) "Head of the facility", the chief administrative officer, or his **or her**
74 designee, of any residential facility;

75 (16) "Head of the program", the chief administrative officer, or his **or her**
76 designee, of any day program;

77 (17) "Individualized habilitation plan", a document which sets forth
78 habilitation goals and objectives for mentally retarded or developmentally
79 disabled residents and clients, and which details the habilitation program as
80 required by law, rules and funding sources;

81 (18) "Individualized rehabilitation plan", a document which sets forth the
82 care, treatment and rehabilitation goals and objectives for patients and clients
83 affected by alcohol or drug abuse, and which details the rehabilitation program
84 as required by law, rules and funding sources;

85 (19) "Individualized treatment plan", a document which sets forth the
86 care, treatment and rehabilitation goals and objectives for mentally disordered
87 or mentally ill patients and clients, and which details the treatment program as
88 required by law, rules and funding sources;

89 (20) "Investigator", an employee [or contract agent] of the department of
90 mental health who is performing an investigation regarding an allegation of
91 abuse or neglect or an investigation at the request of the director of the
92 department of mental health or his designee;

93 (21) "Least restrictive environment", a reasonably available setting or
94 mental health program where care, treatment, habilitation or rehabilitation is
95 particularly suited to the level and quality of services necessary to implement a
96 person's individualized treatment, habilitation or rehabilitation plan and to
97 enable the person to maximize his **or her** functioning potential to participate as
98 freely as feasible in normal living activities, giving due consideration to
99 potentially harmful effects on the person and the safety of other facility or
100 program clients and public safety. For some mentally disordered or mentally
101 retarded persons, the least restrictive environment may be a facility operated by

102 the department, a private facility, a supported community living situation, or an
103 alternative community program designed for persons who are civilly detained for
104 outpatient treatment or who are conditionally released pursuant to chapter 632,
105 RSMo;

106 (22) "Mental disorder", any organic, mental or emotional impairment
107 which has substantial adverse effects on a person's cognitive, volitional or
108 emotional function and which constitutes a substantial impairment in a person's
109 ability to participate in activities of normal living;

110 (23) "Mental illness", a state of impaired mental processes, which
111 impairment results in a distortion of a person's capacity to recognize reality due
112 to hallucinations, delusions, faulty perceptions or alterations of mood, and
113 interferes with an individual's ability to reason, understand or exercise conscious
114 control over his **or her** actions. The term "mental illness" does not include the
115 following conditions unless they are accompanied by a mental illness as otherwise
116 defined in this subdivision:

117 (a) Mental retardation, developmental disability or narcolepsy;

118 (b) Simple intoxication caused by substances such as alcohol or drugs;

119 (c) Dependence upon or addiction to any substances such as alcohol or
120 drugs;

121 (d) Any other disorders such as senility, which are not of an actively
122 psychotic nature;

123 (24) "Mental retardation", significantly subaverage general intellectual
124 functioning which:

125 (a) Originates before age eighteen; and

126 (b) Is associated with a significant impairment in adaptive behavior;

127 (25) "Minor", any person under the age of eighteen years;

128 (26) "Patient", an individual under observation, care, treatment or
129 rehabilitation by any hospital or other mental health facility or mental health
130 program pursuant to the provisions of chapter 632, RSMo;

131 (27) "Psychosurgery",

132 (a) Surgery on the normal brain tissue of an individual not suffering from
133 physical disease for the purpose of changing or controlling behavior; or

134 (b) Surgery on diseased brain tissue of an individual if the sole object of
135 the surgery is to control, change or affect behavioral disturbances, except seizure
136 disorders;

137 (28) "Rehabilitation", a process of restoration of a person's ability to attain

138 or maintain normal or optimum health or constructive activity through care,
139 treatment, training, counseling or specialized attention;

140 (29) "Residence", the place where the patient has last generally lodged
141 prior to admission or, in case of a minor, where his **or her** family has so lodged;
142 except, that admission or detention in any facility of the department shall not be
143 deemed an absence from the place of residence and shall not constitute a change
144 in residence;

145 (30) "Resident", a person receiving residential services from a facility,
146 other than mental health facility, operated, funded or licensed by the department;

147 (31) "Residential facility", any premises, **public or private**, where
148 residential prevention, evaluation, care, treatment, habilitation or rehabilitation
149 is provided for persons affected by mental disorders, mental illness, mental
150 retardation, developmental disabilities or alcohol or drug abuse; except the
151 person's dwelling;

152 (32) "Specialized service", an entity which provides prevention, evaluation,
153 transportation, care, treatment, habilitation or rehabilitation services to persons
154 affected by mental disorders, mental illness, mental retardation, developmental
155 disabilities or alcohol or drug abuse;

156 (33) "Vendor", a person or entity under contract with the department,
157 other than as a department employee, who provides services to patients, residents
158 or clients.

630.165. 1. When any physician, dentist, chiropractor, optometrist,
2 podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister,
3 Christian Science practitioner, peace officer, pharmacist, physical therapist,
4 facility administrator, nurse's aide [or], orderly **or any other direct care staff**
5 in a residential facility, day program, **including privately funded**, or
6 specialized service operated, funded or licensed by the department or in a mental
7 health facility or mental health program in which people may be admitted on a
8 voluntary basis or are civilly detained pursuant to chapter 632, RSMo, or
9 employee of the department **or any private mental health facility or group**
10 **home, as defined in section 633.005, RSMo**, has reasonable cause to believe
11 that a patient, resident or client of a facility, program or service has been abused
12 or neglected, he or she shall immediately report or cause a report to be made to
13 the department or the department of health and senior services, if such facility
14 or program is licensed pursuant to chapter 197, RSMo.

15 2. The report shall contain the name and address of the residential

16 facility, day program or specialized service; the name of the patient, resident or
17 client; information regarding the nature of the abuse or neglect; the name of the
18 complainant, and any other information which might be helpful in an
19 investigation.

20 3. Any person required in subsection 1 of this section to report or cause
21 a report to be made to the department who fails to do so within a reasonable time
22 after the act of abuse or neglect is guilty of an infraction.

23 4. In addition to those persons required to report under subsection 1 of
24 this section, any other person having reasonable cause to believe that a resident
25 has been abused or neglected may report such information to the department.

26 5. Any person who knowingly files a false report of abuse or neglect is
27 guilty of a class A misdemeanor.

28 6. Any person having a prior conviction of filing false reports and who
29 subsequently files a false report of abuse or neglect pursuant to this section or
30 section 565.188, RSMo, is guilty of a class D felony.

630.167. 1. Upon receipt of a report, the department [or its agents,
2 contractors or vendors] or the department of health and senior services, if such
3 facility or program is licensed pursuant to chapter 197, RSMo, shall initiate an
4 investigation within twenty-four hours.

5 2. If the investigation indicates possible abuse or neglect of a patient,
6 resident or client, the investigator shall refer the complaint together with the
7 investigator's report to the department director for appropriate action. If, during
8 the investigation or at its completion, the department has reasonable cause to
9 believe that immediate removal from a facility not operated or funded by the
10 department is necessary to protect the residents from abuse or neglect, the
11 department or the local prosecuting attorney may, or the attorney general upon
12 request of the department shall, file a petition for temporary care and protection
13 of the residents in a circuit court of competent jurisdiction. The circuit court in
14 which the petition is filed shall have equitable jurisdiction to issue an ex parte
15 order granting the department authority for the temporary care and protection
16 of the resident for a period not to exceed thirty days.

17 3. (1) Reports referred to in section 630.165 and the investigative reports
18 referred to in this section shall be confidential, shall not be deemed a public
19 record, and shall not be subject to the provisions of section 109.180, RSMo, or
20 chapter 610, RSMo; except that complete copies of all such reports shall be open
21 and available to the parents or other guardian of the patient, resident, or client

22 who is the subject of such report, but the names and any other descriptive
23 information of the complainant or other person mentioned in the reports shall not
24 be disclosed unless such complainant or person specifically consents to such
25 disclosure. All reports referred to in this section shall be admissible in any
26 judicial proceedings or hearing in accordance with section 36.390, RSMo, or any
27 administrative hearing before the director of the department of mental health, or
28 the director's designee. All such reports may be disclosed by the department of
29 mental health to law enforcement officers and public health officers, but only to
30 the extent necessary to carry out the responsibilities of their offices, and to the
31 department of social services, and the department of health and senior services,
32 and to boards appointed pursuant to sections 205.968 to 205.990, RSMo, that are
33 providing services to the patient, resident or client as necessary to report or have
34 investigated abuse, neglect, or rights violations of patients, residents or clients
35 provided that all such law enforcement officers, public health officers, department
36 of social services' officers, department of health and senior services' officers, and
37 boards shall be obligated to keep such information confidential;

38 (2) Except as otherwise provided in this section, the proceedings, findings,
39 deliberations, reports and minutes of committees of health care professionals as
40 defined in section 537.035, RSMo, or mental health professionals as defined in
41 section 632.005, RSMo, who have the responsibility to evaluate, maintain, or
42 monitor the quality and utilization of mental health services are privileged and
43 shall not be subject to the discovery, subpoena or other means of legal compulsion
44 for their release to any person or entity or be admissible into evidence into any
45 judicial or administrative action for failure to provide adequate or appropriate
46 care. Such committees may exist, either within department facilities or its
47 agents, contractors, or vendors, as applicable. Except as otherwise provided in
48 this section, no person who was in attendance at any investigation or committee
49 proceeding shall be permitted or required to disclose any information acquired in
50 connection with or in the course of such proceeding or to disclose any opinion,
51 recommendation or evaluation of the committee or board or any member thereof;
52 provided, however, that information otherwise discoverable or admissible from
53 original sources is not to be construed as immune from discovery or use in any
54 proceeding merely because it was presented during proceedings before any
55 committee or in the course of any investigation, nor is any member, employee or
56 agent of such committee or other person appearing before it to be prevented from
57 testifying as to matters within their personal knowledge and in accordance with

58 the other provisions of this section, but such witness cannot be questioned about
59 the testimony or other proceedings before any investigation or before any
60 committee;

61 (3) Nothing in this section shall limit authority otherwise provided by law
62 of a health care licensing board of the state of Missouri to obtain information by
63 subpoena or other authorized process from investigation committees or to require
64 disclosure of otherwise confidential information relating to matters and
65 investigations within the jurisdiction of such health care licensing boards;
66 provided, however, that such information, once obtained by such board and
67 associated persons, shall be governed in accordance with the provisions of this
68 subsection;

69 (4) Nothing in this section shall limit authority otherwise provided by law
70 in subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to
71 records by the entity or agency authorized to implement a system to protect and
72 advocate the rights of persons with developmental disabilities under the
73 provisions of 42 U.S.C. Sections 15042 to 15044 and the entity or agency
74 authorized to implement a system to protect and advocate the rights of persons
75 with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing
76 in this section shall serve to negate assurances that have been given by the
77 governor of Missouri to the U.S. Administration on Developmental Disabilities,
78 Office of Human Development Services, Department of Health and Human
79 Services concerning access to records by the agency designated as the protection
80 and advocacy system for the state of Missouri. However, such information, once
81 obtained by such entity or agency, shall be governed in accordance with the
82 provisions of this subsection.

83 4. Anyone who makes a report pursuant to this section or who testifies in
84 any administrative or judicial proceeding arising from the report shall be immune
85 from any civil liability for making such a report or for testifying unless such
86 person acted in bad faith or with malicious purpose.

87 5. Within five working days after a report required to be made pursuant
88 to this section is received, the person making the report shall be notified in
89 writing of its receipt and of the initiation of the investigation.

90 6. No person who directs or exercises any authority in a residential
91 facility, day program or specialized service shall evict, harass, dismiss or retaliate
92 against a patient, resident or client or employee because he or she or any member
93 of his or her family has made a report of any violation or suspected violation of

94 laws, ordinances or regulations applying to the facility which he or she has
95 reasonable cause to believe has been committed or has occurred.

96 7. Any person who is discharged as a result of an administrative
97 substantiation of allegations contained in a report of abuse or neglect may, after
98 exhausting administrative remedies as provided in chapter 36, RSMo, appeal such
99 decision to the circuit court of the county in which such person resides within
100 ninety days of such final administrative decision. The court may accept an
101 appeal up to twenty-four months after the party filing the appeal received notice
102 of the department's determination, upon a showing that:

103 (1) Good cause exists for the untimely commencement of the request for
104 the review;

105 (2) If the opportunity to appeal is not granted it will adversely affect the
106 party's opportunity for employment; and

107 (3) There is no other adequate remedy at law.

630.410. 1. The department shall evaluate any proposed contract to
2 determine whether it meets the following criteria:

3 (1) Conformance with the conditions and priorities of the regional and
4 state division plans;

5 (2) Compliance with department rules and regulations.

6 **2. The department shall terminate a contract with a vendor**
7 **having a pattern of abuse and neglect of patients, residents, or clients**
8 **or misappropriation of client funds or property.**

630.705. 1. The department shall promulgate rules setting forth
2 reasonable standards for residential facilities and day programs for persons who
3 are affected by a mental disorder, mental illness, mental retardation or
4 developmental disability, **including private mental health facilities and**
5 **group homes as defined in section 633.005, RSMo. The exemptions from**
6 **licensure under subdivision (6) of subsection 3 of this section shall not**
7 **apply to such private mental health facilities and group homes.**

8 2. The rules shall provide for the facilities and programs to be reasonably
9 classified as to resident or client population, size, type of services or other
10 reasonable classification. The department shall design the rules to promote and
11 regulate safe, humane and adequate facilities and programs for the care,
12 treatment, habilitation and rehabilitation of persons described in subsection 1 of
13 this section.

14 3. The following residential facilities and day programs shall not be

15 licensed by the department:

16 (1) Any facility or program which relies solely upon the use of prayer or
17 spiritual healing;

18 (2) Any educational, special educational or vocational program operated,
19 certified or approved by the state board of education pursuant to chapters 161,
20 162 and 178, RSMo, and regulations promulgated by the board;

21 (3) Any hospital, facility, program or entity operated by this state or the
22 United States; except that facilities operated by the department shall meet these
23 standards;

24 (4) Any hospital, facility or other entity, excluding those with persons who
25 are mentally retarded and developmentally disabled as defined in section 630.005
26 otherwise licensed by the state and operating under such license and within the
27 limits of such license, unless the majority of the persons served receive activities
28 and services normally provided by a licensed facility pursuant to this chapter;

29 (5) Any hospital licensed by the department of social services as a
30 psychiatric hospital pursuant to chapter 197, RSMo;

31 (6) Any facility or program accredited by the Joint Commission on
32 Accreditation of Hospitals, the American Osteopathic Association, Accreditation
33 Council for Services for Mentally Retarded or other Developmentally Disabled
34 Persons, Council on Accreditation of Services for Children and Families, Inc., or
35 the Commission on Accreditation of Rehabilitation Facilities;

36 (7) Any facility or program caring for less than four persons whose care
37 is not funded by the department.

38 **4. In establishing standards for each type of facility, program, or**
39 **group home listed in subsection 1 of this section, the department shall**
40 **classify the standards into three categories for each type of facility,**
41 **program, or group home as follows:**

42 (1) **Class I standards are standards the violation of which would**
43 **present either an imminent danger to the health, safety, or welfare of**
44 **any resident or client or a substantial probability that death or serious**
45 **physical harm would result;**

46 (2) **Class II standards are standards which have a direct or**
47 **immediate relationship to the health, safety, or welfare of any resident**
48 **or client, but which do not create imminent danger;**

49 (3) **Class III standards are standards which have an indirect or**
50 **a potential impact on the health, safety, or welfare of any resident or**

51 **client.**

630.715. 1. The department shall establish a procedure for the licensing
2 of residential facilities and day programs, **including privately funded**, for
3 persons described in section 630.705, which procedure shall provide for the
4 acceptance of a license, a temporary operating permit or a probationary license
5 issued by the department of social services under sections 198.006 to 198.096,
6 RSMo, as regards the licensing requirements in the following areas:

7 (1) General medical and health care;

8 (2) Adequate physical plant facilities including fire safety, housekeeping
9 and maintenance standards;

10 (3) Food service facilities;

11 (4) Safety precautions;

12 (5) Drugs and medications;

13 (6) Uniform system of recordkeeping;

14 (7) Resident and client rights and grievance procedures.

15 However, the department shall require annually that any facilities and programs
16 already licensed by the department of social services under chapter 198, RSMo,
17 which desire to provide services to persons diagnosed as mentally disordered,
18 mentally ill, mentally retarded or developmentally disabled in accordance with
19 sections 630.705 to 630.760 meet the department's requirements in excess of
20 those required for licensure or certification under chapter 198, RSMo, which are
21 appropriate to admission criteria and care, treatment, habilitation and
22 rehabilitation needs of such persons.

23 2. Applications for licenses shall be made to the department upon forms
24 provided by it and shall contain such information and documents as the
25 department requires, including, but not limited to, affirmative evidence of ability
26 to comply with the rules adopted by the department. Each application for a
27 license, except applications from a governmental unit or a facility caring for less
28 than four persons, which shall not pay any fee, shall be accompanied by a license
29 fee of ten dollars for establishments which accept more than three but less than
30 ten persons and fifty dollars from establishments which accept ten or more. The
31 license fee shall be paid to the director of revenue for deposit to the general
32 revenue fund of the state treasury.

33 3. An applicant for a license shall submit an affidavit under oath that all
34 documents required by the department to be filed pursuant to this section are
35 true and correct to the best of his knowledge and belief, that the statements

36 contained in the application are true and correct to the best of his knowledge and
37 belief and that all required documents are either included with the application
38 or are currently on file with the department.

630.755. 1. An action may be brought by the department, or by the
2 attorney general on his own volition or at the request of the department or any
3 other appropriate state agency, to temporarily or permanently enjoin or restrain
4 any violation of sections 630.705 to 630.760, to enjoin the acceptance of new
5 residents until substantial compliance with sections 630.705 to 630.760 is
6 achieved, or to enjoin any specific action or practice of the residential facility or
7 day program, **including any private mental health facility or group home**
8 **as defined in section 633.005, RSMo.** Any action brought under the
9 provisions of this section shall be placed at the head of the docket by the court
10 and the court shall hold a hearing on any action brought under the provisions of
11 this section no less than fifteen days after the filing of the action.

12 2. [Any facility or program which has received a notice of noncompliance
13 as provided by sections 630.745 to 630.750 is liable to the state for civil penalties
14 of up to one hundred dollars for each day that noncompliance continues after the
15 notice of noncompliance is received.] The attorney general shall, upon the request
16 of the department, bring an action in a circuit court of competent jurisdiction to
17 recover [the] **a civil penalty against the operator of the facility, group**
18 **home, or program. Such action shall be brought in the circuit court for**
19 **the county in which the facility, group home, or program is**
20 **located.** The circuit court shall [have the authority to] determine the amount
21 of civil penalty to be assessed **within the limits set out in this**
22 **section. Appeals may be taken from the judgment of the circuit court**
23 **as in other civil cases.**

24 3. **The operator of any facility, group home, or program which**
25 **has been cited with a violation of sections 630.705 to 630.760 or the**
26 **rules established thereunder is liable to the state for civil penalties of**
27 **up to twenty-five thousand dollars for each day that the violations**
28 **existed or continue to exist. Violations shall be presumed to continue**
29 **to exist from the time they are found until the time the department of**
30 **mental health finds them to have been corrected. When applicable, the**
31 **amount of the penalty shall be determined as follows:**

32 (1) **For each violation of a class I standard, not less than one**
33 **thousand dollars nor more than ten thousand dollars;**

34 (2) For each violation of a class II standard, not less than two
35 hundred fifty dollars nor more than one thousand dollars;

36 (3) For each violation of a class III standard, not less than fifty
37 dollars nor more than two hundred fifty dollars;

38 (4) For each specific class I violation by the same operator at a
39 particular facility, program, or group home which has been previously
40 cited within the past twenty-four months and for each specific class II
41 or III violation by the same operator at a particular facility, program,
42 or group home which has been previously cited within the past twelve
43 months, double the amount last imposed;

44 (5) In accordance with the provisions of this section, if the
45 department imposes a civil monetary penalty for a class I violation, the
46 liability for such penalty shall be incurred immediately upon the
47 imposition of the penalty for the violation regardless of any subsequent
48 correction of the violation by the facility, program, or group home. For
49 class II or III violations, if the department imposes a civil monetary
50 penalty, the liability for such penalty shall be incurred if a breach of
51 a specific state law or regulation remains uncorrected and not in
52 accord with the accepted plan of correction at the time of the
53 reinspection conducted under subsection 3 of section 630.745.

54 A judgment rendered against the operator of a facility, program, or
55 group home under this subsection shall bear interest as provided in
56 subsection 1 of section 408.040, RSMo.

57 4. The imposition of any remedy provided for in sections 630.705
58 to 630.760 shall not bar the imposition of any other remedy.

59 5. Penalties collected for violations of this section shall be
60 transferred to the state school moneys fund as established in section
61 166.051, RSMo, and distributed to the public schools of this state in the
62 manner provided in section 163.031, RSMo. Such penalties shall not be
63 considered a charitable contribution for tax purposes.

64 6. To recover any civil penalty, the moving party shall prove by
65 a preponderance of the evidence that the violation occurred.

66 7. The operator of a facility, group home, or program against
67 whom an action to recover a civil penalty is brought under this section
68 may confess judgment as provided in section 511.070, RSMo, at any time
69 prior to hearing. If such operator agrees to confess judgment, the
70 amount of the civil penalty recommended by the moving party in its

71 **petition shall be reduced by twenty-five percent and the confessed**
72 **judgment shall be entered by the circuit court at the reduced amount.**

633.005. As used in this chapter, unless the context clearly requires
2 otherwise, the following terms shall mean:

3 (1) "Comprehensive evaluation", a study, including a sequence of
4 observations and examinations, of an individual leading to conclusions and
5 recommendations formulated jointly by an interdisciplinary team of persons with
6 special training and experience in the diagnosis and habilitation of the mentally
7 retarded and developmentally disabled;

8 (2) "Division", the division of mental retardation and developmental
9 disabilities of the department of mental health;

10 (3) "Division director", the director of the division of mental retardation
11 and developmental disabilities of the department of mental health, or his
12 designee;

13 (4) "**Group home**", a residential facility serving nine or fewer
14 residents, similar in appearance to a single-family dwelling and
15 providing basic health supervision, habilitation training in skills of
16 daily and independent living and community integration, and social
17 support. Group homes do not include family living arrangements or
18 individualized supported living;

19 (5) "Mental retardation facility", a private or department facility, other
20 than a regional center, which admits persons who are mentally retarded or
21 developmentally disabled for residential habilitation and other services and which
22 is qualified or licensed as such by the department pursuant to chapter 630,
23 RSMo. Such terms shall include, but shall not be limited to, habilitation centers,
24 group homes, and private or public residential facilities for persons who are
25 developmentally disabled;

26 [(5)] (6) "Regional center", an entity so designated by the department to
27 provide, directly or indirectly, for comprehensive mental retardation and
28 developmental disability services under this chapter in a particular region;

29 [(6)] (7) "Respite care", temporary and short-term residential care,
30 sustenance and supervision of a mentally retarded or developmentally disabled
31 person who otherwise resides in a family home;

32 [(7)] (8) "State advisory council", the Missouri advisory council on mental
33 retardation and developmental disabilities as created in section 633.020.

633.300. 1. All private group homes and mental health facilities

2 shall be licensed by the department of mental health and shall be
3 subject to the same state laws and regulations as the state-operated
4 mental health facilities, including but not limited to sections 630.705 to
5 630.805, RSMo.

6 2. All employees of private group homes and mental health
7 facilities shall:

8 (1) Be subject to the same training requirements established for
9 state mental health workers with comparable positions in public group
10 homes and mental health facilities. Such required training shall be
11 paid for by the employer; and

12 (2) Be compensated by the employer in an amount at least equal
13 to the average hourly wage paid by the state to mental health workers
14 with comparable positions in public group homes and mental health
15 facilities.

16 3. Private facilities and group homes that are Medicaid-waiver
17 providers shall be subject to the same medical errors reporting
18 requirements of other mental health facilities and group homes.

19 4. The division shall promulgate rules or amend existing rules to
20 implement the provisions of this section. Any rule or portion of a rule,
21 as that term is defined in section 536.010, RSMo, that is created under
22 the authority delegated in this section shall become effective only if it
23 complies with and is subject to all of the provisions of chapter 536,
24 RSMo, and, if applicable, section 536.028, RSMo. This section and
25 chapter 536, RSMo, are nonseverable and if any of the powers vested
26 with the general assembly pursuant to chapter 536, RSMo, to review, to
27 delay the effective date, or to disapprove and annul a rule are
28 subsequently held unconstitutional, then the grant of rulemaking
29 authority and any rule proposed or adopted after August 28, 2007, shall
30 be invalid and void.

633.303. Any employee, including supervisory personnel, of a
2 private mental health facility who purposely, knowingly, and willfully
3 violates a stated or written policy of the division, any rule promulgated
4 by the division, or any state law directly related to provision of mental
5 health services regulated by the division shall be dismissed; except
6 that, an employee's good faith efforts to follow the stated or written
7 policies of the division, the rules promulgated by the division, or the
8 state laws directly related to the provision of mental health services

9 shall be a mitigating factor in determining whether an employee of a
10 private group home is dismissed under this section.

633.306. 1. Beginning January 1, 2008, all private mental health
2 facilities and group homes shall, on a quarterly basis, submit a
3 comprehensive report to the department on any staff and personnel
4 turnover at the facility or group home. Such report shall include the
5 number, job description, salary, and duration of employment regarding
6 such staff and personnel turnover. Such reports shall be submitted no
7 later than thirty days after the end of each calendar quarter.

8 2. Beginning January 1, 2009, the department shall collect the
9 information submitted under subsection 1 of this section and submit an
10 annual report to the general assembly on or before March fifteenth of
11 each year regarding the staff and personnel turnover at private mental
12 health facilities and group homes. Such report shall include
13 information that is specific to each facility and group home, as well as
14 information inclusive of all such facilities and group homes.

633.309. The department of mental health shall not transfer any
2 person to or utilize the services of any private mental health facility or
3 group home after the effective date of this section until such time as
4 the department has fully implemented the requirements of this act.

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